

MAY 23 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY:  DEPUTY CLERK

UNITED STATES OF AMERICA

Case No. 7:14-cr-00042-1

v.

MEMORANDUM OPINION

ANTHONY JEROME CLAYTOR,
Petitioner.

By: Hon. Michael F. Urbanski
United States District Judge

By the Order entered on April 17, 2017, the court notified petitioner of its intent to construe and address petitioner's "motion to appoint counsel" as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The Order instructed petitioner to complete and return a form § 2255 motion if petitioner intended the motion to appoint counsel as a challenge to the validity or correctness of the judgment or sentence. See Castro v. United States, 540 U.S. 375, 383 (2003) (requiring the court to give petitioner an opportunity to elect whether a criminal motion should be addressed as § 2255 motion). The Order also notified petitioner that a failure to respond would result in dismissal of the § 2255 motion without prejudice.

Petitioner responded, objecting to the court's construction of the motion to appoint counsel as a § 2255 motion. Accordingly, the court dismisses the conditionally filed § 2255 motion without prejudice and denies a certificate of appealability per 28 U.S.C. § 2253(c) and Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Petitioner is not entitled to the relief sought in the original motion to appoint counsel because petitioner no longer has a constitutional right to counsel. See Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) ("The right to appointed counsel extends to the first appeal of right, and no further."). The court may appoint counsel if the court "determines that the interests of justice so require. . . ." 18 U.S.C. § 3006A(a)(2)(B). The court does not find that the interests of

justice presently require appointment of counsel. Accordingly, the motion to appoint counsel is denied.

ENTER: This 23rd day of May, 2017.

/s/ Michael F. Urbanski

United States District Judge